

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

77-1055

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 77-1055

UNITED STATES OF AMERICA,

Appellee,

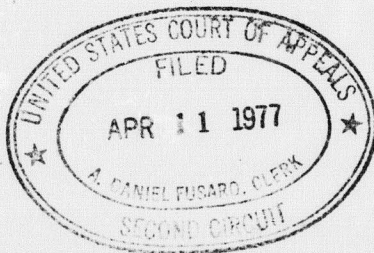
- against -

JAMES DI GIOVANNI,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLEE'S APPENDIX



DAVID G. TRAGER,
United States Attorney,
Eastern District of New York,

PAGINATION AS IN ORIGINAL COPY

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A 1

ADDRESS ONLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

TRP:AAS:rd
F# 751,804

United States Department of Justice

UNITED STATES ATTORNEY

EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ MAR 24 1977 ★
A.M. _____
P.M. _____

July 9, 1976

Honorable Edward R. Neaher
United States District Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. James DiGiovanni
Docket No. 75 CR 439

Dear Judge Neaher:

On May 21, 1976 James DiGiovanni pleaded guilty before Your Honor to Counts One, Three and Six of indictment 75 CR 439, in satisfaction of charges pending against him in that indictment. Mr. DiGiovanni is scheduled to be sentenced on July 16, 1976.

23
Mr. DiGiovanni was arrested on March 29, 1975 while he was in possession of a pound of cocaine which he was preparing to deliver to undercover agents of the New York Drug Enforcement Task Force. Shortly after his arrest, Mr. DiGiovanni gave a statement to the arresting agents. In this statement, he explained how he had obtained the cocaine, and he described the individuals from whom he had received the narcotics. In addition, after giving the statement, Mr. DiGiovanni spoke on the telephone with his suppliers and arranged a meeting for the delivery of an additional quantity of cocaine. This conversation was monitored by the agents with Mr. DiGiovanni's consent. Subsequently, as a result of the information provided by Mr. DiGiovanni and the telephone conversation, two individuals named Stephen and Stanley Lifschitz were apprehended by agents in connection with this case. At the time of their arrest, the Lifschitz brothers were identified by Mr. DiGiovanni as the individuals from whom he had received the pound of cocaine with which he had been arrested.

Honorable Edward R. Neaher
United States District Judge

-2-

July 9, 1976

After he was released on bail, however, Mr. DiGiovanni stated that he was unwilling to testify in the grand jury and at trial in the Lifschitz case. Moreover, during the period between March of 1975 and the present Mr. DiGiovanni has continued to refuse to cooperate with the Government, despite repeated requests for his cooperation. As a result, the Government has been forced to dismiss all charges pending against Stephen and Stanley Lifschitz in this case.

We realize that sentencing is a matter totally within the discretion of the Court. However, we do feel that at this time Your Honor should have before you the above facts concerning Mr. DiGiovanni's refusal to cooperate in this case, a refusal which has meant that the Government has been unable to prosecute two major suppliers of narcotics.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By: Alvin A. Schall
Alvin A. Schall
Assistant U.S. Attorney

cc:

Irving Cohen, Esq.
299 Broadway
New York, New York 10007

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

-against- :

75-CR-439

JAMES DI GIOVANNI, :

Defendant. :

United States Courthouse
Brooklyn, New York

July 23, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE EDWARD R. NEAHER, U.S.D.J.

PERRY AUERBACH
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: ALVIN A. SCHALL, ESQ.
Assistant U.S. Attorney

IRVING COHEN, ESQ.
Attorney for the Defendant

Also Present:

Joseph Di Giovanni (father of Defendant)

1 THE CLERK: Criminal cause for sentence, United
2 States versus James Di Giovanni.

3 THE COURT: Now, have you had an opportunity to
4 review the pre-sentence report concerning James
5 Di Giovanni?

6 MR. COHEN: I have.

7 THE COURT: Is there any reason why sentence
8 should not be imposed on him at this time?

9 MR. COHEN: No.

10 THE COURT: I assume you wish to make a state-
11 ment on his behalf?

12 MR. COHEN: Yes. It's going to be a very
13 difficult job for me to speak on behalf of James
14 Di Giovanni, and it's especially difficult now, even
15 more so after Steven has already gone through sentencing
16 process. I have been doing criminal defense work for
17 about nine years and I have represented hundreds of
18 people, and I have spoken on sentence hundreds of times.
19 I think this is perhaps the most difficult one I have
20 ever had to speak on, and that's because I think I
21 probably violated one of the cardinal rules supposedly
22 of defense lawyers, that is not to get personally
23 involved with the client. It was impossible in this
24 situation. It's impossible because James Di Giovanni
25 could be me, and I could be James Di Giovanni. We

1 came from similar backgrounds, a secure middle class
2 home, exposed to the same opportunities and exposed to
3 the same dangers and threats. A little quirk here, and
4 a little turn on a different corner we could have
5 changed positions.

6 I have gotten involved because I have known him
7 now for almost two years, and I have known the family
8 and I have met his fiancée, Miss Vokel (ph), and his
9 father and his mother and his brother.

10 So, it's especially difficult for me at this
11 time.

12 The probation report seems to indicate that
13 James was a large violator of the drug laws. I think
14 things that weren't brought out in the probation
15 report or the reasons really why he got involved with
16 drugs, and I don't think it's possible in a probation
17 report to really review the culture of the use of this
18 country in the early sixties and the last part of the
19 seventies. Books have been written about it. Disagree-
20 ments as to the causes, perhaps the Government's policy
21 overseas, perhaps permissive parents, perhaps the free
22 wheeling society in which we live in, the amount of
23 independence we all have, the opportunities that are
24 available to all of us to engage in all sorts of acts,
25 and I know at least one very well known Judge, Judge

1 Morher has written the book called, I think that's
2 been exacerbated by Governmental documented law
3 breaking. But, in any rate, we can't discuss that
4 here. We can only discuss what caused James DiGiovanni
5 to get involved here. Given the youth movement of
6 this country in the early 60's and 70's, drugs were
7 available. Perhaps it was a disillusion moment, present
8 Governmental oppression of drugs, and use on the other
9 hand.

10 At any rate, Mr. DiGiovanni did begin using
11 drugs and the drugs that he used were the most serious
12 drugs, the drugs that really dehabilitation, and
13 addiction to heroin and later methadone. But, Mr.
14 DiGiovanni never sold heroin, and never sold methadone.
15 He was also educated. He's a college graduate. He's
16 a bright person. In spite of his problems with drugs,
17 he still had enough of a feel for reality to understand
18 that, and could not bring himself to sell those drugs
19 because he, himself, knew of the dangers of those
20 drugs. The probation report is not clear that he was a
21 drug addict. I think the agents, and I think Mr. Schall
22 will bear this out, will substantiate that fact. At
23 the time of his arrest Mr. DiGiovanni was going through
24 withdrawal symptoms and he was asking for medication.
25 But, he never sold those drugs, your Honor. He sold

1 cocaine perhaps, under a misguided use, and that wasn't
2 as serious as heroin, but it wasn't moving against the
3 law to sell it. But, I think the arrest of Mr. James
4 DiGiovanni has had a salutary effect on him. It's
5 been almost a year and a half now, your Honor, contrary
6 to what the probation report indicates, Mr. DiGiovanni
7 did enter a drug detoxification program after his
8 arrest and that he did detoxify. He came back to his
9 family, which he has never been estranged from.
10 Really, your Honor, as the letters and the probation
11 report indicate, the family was intact, and he always
12 had a good relationship with the family. For the last
13 two years he has been seeing a Miss Linda Wickell. He
14 indicates to me that he does intend to maintain the
15 relationship hopefully on a legal basis. By his
16 parent's own description, they feel she is very good
17 for him. Personally, your Honor, I feel that way too,
18 and I do believe that they will get married. Mr. James
19 DiGiovanni, after his arrest, I think finally saw
20 where his life was going, graduated from college, he
21 went to several graduate schools and got some credits,
22 which is all documented, but it was difficult to find
23 himself, and it was a rough period in his life and he
24 took advantage of the easy ways more than the difficult
25 ways.

1 Perhaps it was easy for him, because growing up
2 everything was taken care of him for him, and that's
3 why I feel a certain kinship, because when I grew up
4 I didn't even have to clean my room, everything was done
5 for me. It was easier too. Some can achieve that
6 responsibility, some can't. Mr. DiGiovanni apparently
7 could not, and took the easy way out. We have to look
8 at what is done in the last year and a half. In the
9 last year and a half he detoxified. He has not been
10 involved in criminal activity. He is back living with
11 his family. He now has a job. Although it's only a
12 job he's had for a little while, it's a job, and he's
13 working hard at it. The probation report also indicates
14 he's not a person who would be afraid to rob you or hit
15 you or beat you up or to abuse you verbally in any way.

16 Unfortunately, our nation is a nation of people
17 who use drugs, some get them legally through prescrip-
18 tions, some don't. He got them illegally.

19 Your Honor has received letters from certain
20 members of the community. These letters indicate, I
21 believe, that the family is a good family, and that
22 Jim is a good boy. The probation report indicates
23 that he did well in school, that he graduated in the
24 top third of his class.

25 I think the major criticism we can say of Jim

1 DiGiovanni is that he lacks certain responsibility,
2 a certain respect, but I think he's getting that. I
3 think he's getting that now. His lifestyle has changed
4 completely. He does not associate with any of the
5 people he has had absolutely nothing to do with them,
6 and I think the realization of what was going on
7 effected him enough that he would do what the Government
8 wanted him to do.

9 At the time of the offense he was really not
10 engaged in the sale of drugs any longer. He did it,
11 your Honor, because it was importune to do it. He
12 knew it was wrong. He knew it was wrong. There's no
13 issue about that. But even at that particular time he
14 was starting to see where he was going. His addiction
15 was becoming more and more of a problem. After he
16 got arrested, after a certain period of time he thought
17 about it, and felt that he no longer wanted to have
18 anything to do with his prior existence in the drug
19 world.

20 I think it's a totally responsible position, a
21 reasonable one to make. I don't think he should be
22 chastized for it.

23 I return now, your Honor, to my initial state-
24 ment, that this is a most difficult statement, I don't
25 know what an extended period of incarceration will do

1 for Mr. James DiGiovanni. He is on the way -- I met
2 his father a year and a half ago, and the relationship
3 was difficult. There's a tremendous bond between them
4 which has not been before. His mother has always been
5 with him, and he's always relied on his mother. He's
6 got his brothers who have always been close. No
7 matter where he has been, he's always been home, in
8 effect, physically as well as in his heart. To send
9 Jim DiGiovanni away for a long period of time might
10 destroy that amount of rehabilitation which he, himself,
11 is starting to do for himself. Remember him bitter?
12 It might prevent him from continuing with the job that
13 he has now or to further his education -- going to --
14 to continue going to graduate school. Your Honor knows
15 what a college degree is now. With a BA in sociology
16 you really can't do much. I don't know what else to
17 add except that in your heart you just wish you can give
18 Jim as much sympathy and mercy as you can, knowing the
19 seriousness of the charge. I have nothing further.

20 THE COURT: Let the record show that I have
21 received and read the defendant's letter to the Court,
22 but I invite the defendant to make any statements he
23 wishes to make at this time, which is his right in open
24 Court.

25 Is there anything you wish to add?

DEFENDANT DIGIOVANNI: Well, basically, like I wrote in the letter, over the last year (pause).

Excuse me.

THE COURT: All right, let me ask counsel this question. You indicated that you believed this defendant is somehow detoxified, you put it, and in command of the narcotics situation. Do you believe that?

MR. COHEN: Yes, your Honor. I certainly do. For number one, your Honor, he was given a urine analysis test by the Probation Department which proved negative, and I would know that, your Honor. I don't know what else I can say.

THE COURT: I'm simply pointing out to you that one of the actions available to the Court is to send him for study and observation under that, I presume.

MR. COHEN: I don't think he needs that, because I believe that for the last year or so he has been detoxified. He always seemed to -- from what I understand -- control his habit to a certain degree. It started to get out of hand at that time, and I think that's what culminated this incident, and it's now -- I really have to know what I am doing. I would indicate, your Honor, that the probation report did indicate that there was pretty much the same degree of

1 culpability of James and his brother.

2 THE COURT: I don't agree with that.

3 MR. COHEN: In this particular action.

4 THE COURT: I don't agree with that. I don't
5 believe his brother would be in trouble, except for him.

6 MR. COHEN: Well, I think most people would look
7 at it objectively that way, your Honor, but I think it
8 can be looked at another way. I don't know what I can
9 say.

10 JOSEPH DI GIOVANNI: Your Honor, may I say
11 something?

12 THE COURT: You may.

13 JOSEPH DI GIOVANNI: Your Honor, in the past
14 year he has changed quite a bit. This, your Honor, I
15 can assure you. He lived with me. As far as drugs, I
16 don't see any evidence of his using, and I have a little
17 bit of experience in my time knowing if he was on dope
18 or not. I don't see any of that. He has cut his hair.

19 THE COURT: I don't worry about long hair.

20 JOSEPH DI GIOVANNI: He has gotten himself a job
21 and he gets up earlier. The change in him is for the
22 best, radically. I think he is on the way. I think he
23 has seen the light. I think he's on his way to
24 becoming the man he should be. And, whatever your
25 Honor can do would certainly be greatly appreciated.

1 I think to incarcerate the boy, from what I hear your
2 Honor, and it's only hearsay, there's more drugs in
3 the prisons, and then, and if the boy is anywhere near
4 drugs, he will get it in there. Outside he can be
5 controlled by me, and the Probation Officer which I
6 say, too, your Honor, I don't believe this boy has
7 touched drugs in the last year.

8 THE COURT: Well, you have written fully your
9 views. I don't wish to make it difficult for you at
10 this time.

11 DEFENDANT DI GIOVANNI: I just want to say --

12 THE COURT: I want to give you the obligation
13 to speak to the Court, if you want to do that?

14 DEFENDANT DI GIOVANNI: Just like Mr. Cohen
15 said, my father said over the last year my lifestyle
16 was entirely different than it is at this point. As
17 far as a job, and as far as staying with my parents,
18 and as far as not traveling around, and mainly the
19 use of drugs and association with my old friends and
20 acquaintances, that has been severed, and drugs have
21 been severed, and that's about it.

22 THE COURT: I would like to point out to you,
23 however, that a couple of your friends are not exactly
24 friends of society, and they are the ones who are the
25 subject of the Government's letter here. Now, one of

1 the signs of rehabilitation very often is the willing-
2 ness to help the Government in its efforts to combat
3 this evil. Now, I don't care what people think about
4 cocaine becoming like marijuana in the next 20 or 25
5 years. Cocaine is the number two hard drug. It
6 doesn't come cheap, as your own prices indicated; does
7 it? And you not only did it once here, but you did it
8 over and over again, and what I am saying to you that
9 anybody who takes cocaine, as something that society
10 can brush off, is making a terrible mistake, because
11 we see it every day in this Court, and what it does
12 to those who use it, and it is as addictive in the
13 same way as heroin is, but it is destructive of the
14 mind and the will, and it brings about the need to
15 make money way beyond the person's capacity to make it
16 in order to keep feeding the desire to have it, and
17 these are the things that lead to the subsidiary crimes
18 I mentioned earlier; mugging people, robbing things,
19 doing things they can to scrape it up, because they
20 can't work, they can't do this, but they have to get
21 the money.

22 Now, what I am saying to you the only way the
23 Government can hope to cope with it is to at least en-
24 list the cooperation of those who want consideration
25 from it, and that is to lead the Government to those

1 at the top, who just sell it, who don't want it. They
2 never use it. They just sell it, and they get rich
3 on it.

4 Now, the Government here has written a letter
5 to the Court indicating a complete change of mind on
6 your part to enable the Government to do something
7 about these so-called bigger dealers, I presume they
8 are, whom you know, and whom you could aid the
9 Government to do something about.

10 DEFENDANT DIGIOVANNI: May I respond to that?

11 MR. COHEN: May I respond to that?

12 THE COURT: Yes, Mr. Cohen. I would like to
13 hear your response to that.

14 MR. COHEN: Mr. DiGiovanni and I discussed the
15 Government's request on many occasions. It was -- I
16 don't think that we can say that it's a very simple
17 decision to make.

18 THE COURT: Let me say right at the start, if
19 there's some kind of loyalty in it, it is a very
20 misguided loyalty.

21 MR. COHEN: No. It's not loyalty at all, your
22 Honor. It's not loyalty at all. It involves Mr.
23 DiGiovanni reentering into the area in which he was
24 trying to extricate himself from. As your Honor is
25 well aware, once we do cooperate, there are several

1 things that you must do in order to fulfill the
2 cooperation with the Government.

3 THE COURT: It's my understanding he refused to
4 testify against those who supplied him with the drugs.

5 MR. SCHALL: Your Honor, if I might, my position
6 with respect to cooperation was that we were asking
7 for Mr. DiGiovanni to testify in the Grand Jury in this
8 case, and that at a trial if necessary.

9 THE COURT: As to where he got the stuff?

10 MR. SCHALL: That's correct. Right. Exactly.
11 There was never a requirement that Mr. DiGiovanni
12 associate. In fact, this would be discouraged, that
13 he would associate with those people. The Government
14 is interested in prosecuting the people who provided
15 the cocaine with which he was arrested, and it was
16 simply Grand Jury testimony and trial testimony.
17 Obviously, any additional information he could provide
18 would certainly help him, but we were interested in
19 here was Grand Jury testimony and trial testimony.
20 There was no request that he associate or become
21 involved with the individuals named in the letter.

22 THE COURT: Well, your Honor, there were several
23 discussions with Mr. Schall. These discussions revolved
24 around all levels of cooperation, of course, that was a
25 primary of cooperation. My client felt he did not want

1 to involve himself in any way at all with any part of
2 the drug culture any longer. He made the initial
3 decision, your Honor, at the time of his arrest, because
4 it was under very very trying circumstances. He was
5 withdrawing from heroin, his fiancée was arrested, and
6 frankly, I don't think he was really of understanding
7 pretty much of what he was doing at the time, but
8 apart from that, your Honor, he felt that if he started
9 to cooperate in any way with the Government, he would
10 be asked or perhaps compelled to do other things as
11 well. Maybe that was incorrect or maybe not. I take
12 no position with respect to the cooperation, and that
13 was his feelings about it. Maybe he was misguided,
14 maybe he wasn't, but it came from a sincere desire to
15 divorce himself, hopefully, forever from that kind of
16 culture.

17 THE COURT: Well, I can't find that an adequate
18 explanation. Now, does the Government have anything it
19 wishes to add to its letter of July 9th?

20 MR. SCHALL: No, your Honor. The Government will
21 simply stand on that letter.

22 THE COURT: In case I did not, I wish the record
23 to show that I also read the letter of defendant's
24 father which was addressed to the Court on behalf of
25 this defendant as well as his brother, and also the

1 defendant's own letter which is not dated, but oh, yes,
2 it is dated July 22nd, 1976.

3 " Now, let me say, you are in a somewhat different
4 position than your brother. I think at the time I
5 accepted your plea of guilty I pointed out to you that
6 each of the transactions in which you engaged could
7 well have brought you a heavy prison term, and the
8 amounts here are certainly in what one would call the
9 big dealing range.

10 Now, in the light of what I feel is an
11 unwarranted reluctance on your part to assist the
12 Government and so your desire to turn away from this
13 kind of crime, I feel that I must impose on you a more
14 serious sentence.

15 I am therefore going to impose a term of five
16 years, but I am going to make you eligible for parole,
17 I am going to specify that you will be eligible for
18 parole under the new act, which has just been passed,
19 at the expiration of one year.

20 Now, if within that one year you change your
21 mind and are -- that is within 120 days -- about the
22 desirability of helping the Government do something
23 about this drug scene which has had its consequences
24 on you, as well as many others, you may make an
25 application to the Court for a reduction of sentence,

1 but not otherwise. So therefore, on your plea of
2 guilty to Counts 1, 3 and 6 of Indictment 75 Criminal
3 439, I commit you to the custody of the Attorney
4 General for a period of five years with eligibility
5 for parole at the expiration of one year.

6 Now, I am also prepared to recommend, if you
7 so wish, the institution in which you shall serve that
8 sentence. Danbury is nearby or would you prefer
9 Connecticut? I will be glad to recommend that, if you
10 wish?

11 MR. COHEN: Is Allenwood available, your Honor?

12 THE COURT: I do not know. I can recommend
13 that, but I do not know.

14 THE MARSHAL: They generally don't want to take mor
15 than four years.

16 MR. COHEN: We would ask for Danbury, your
17 Honor.

18 THE COURT: All right, Danbury.

19 MR. SCHALL: Your Honor, what is the particular
20 statute the one year eligibility is under?

21 THE COURT: 4205. I don't have the new act
22 here. I did have it and somebody walked off with it.
23 It's 4205(b)(1), I believe. I will put it in the
24 judgment when it's typed up. I think it's 4205(b)(1).
25

THE MARSHAL: I believe so.

1 THE COURT: That sounds correct.

2 PROBATION OFFICER: To run concurrently, your
3 Honor?

4 THE COURT: Yes. The sentence will run
5 concurrent as to each of the three counts. I meant on
6 Count 1 the same sentence, on Count 3 the same
7 sentence, on Count 6 the same sentence. The sentence
8 is to run concurrently, and of course I must also add
9 a special parole term, I hereby fix a term of three
10 years.

11 MR. COHEN: Does your Honor allow the same
12 surrender date?

13 THE COURT: It will --

14 MR. COHEN: Which is?

15 MR. SCHALL: By noon of August 6th. In view of
16 the sentence imposed, the Government would move at
17 this time to dismiss Counts 2, 4 and 5 CR 439 as
18 against Mr. James DiGiovanni.

19 THE COURT: Counts 2, 4 and 5, all right, those
20 motions are granted.

21 MR. SCHALL: Thank you, your Honor.

22 (Whereupon these proceedings were concluded.)
23
24
25

* * *

A 22

James DiGiovanni, 03740
Pembroke Station
Danbury, Connecticut 06810

Attorney Irving Cohen
299 Broadway
New York, New York 10007

for: The Honorable Judge Edward R. Neaher

Sir:

I am writing you this letter as a supplement to the legal version of my Rule 35 being filed by my attorney. When I wrote you a personal letter prior to my sentencing, I tried to explain various misconceptions and discrepancies the prosecutor and agents had theorized about me. I also wanted to explain to you many statements in my pre-sentence report that I felt were erroneous and one sided. I do not believe either the prosecutors and agents reports to the court, or my pre-sentence report showed to you all the true and favorable aspects of my past. I believe that these reports concentrated only on the derogatory and negative aspects, and contained many erroneous theories on my lifestyle and alleged illegal activities.

Since you have my personal letter I do not think it is necessary to reiterate the favorable aspects of my past. I only wish that I could have had the opportunity to disprove the many discrepancies and misconceptions that were given to the court in order to judge me.

Sir, I would like to explain to you my reasons for not wanting to cooperate with Assistant prosecutor Schall. I believe my failure to cooperate had a large influence on the severity of my sentence. On the day I was arrested I agreed to tell the agents where I received the drugs from. I cooperated with the agents because of the agreement they made with me. They had promised me they wouldn't prosecute my wife or anybody else except my brother.

I did feel it necessary to allivate my wife and the other members of the household of any prosecution. I wanted to insure that these people, who were totally innocent of any crime, were not involved in my perdicament. When I agreed to tell the agents where I received the drugs from, I was repeatedly told that I would not have to testify against anyone, or be involved in the trial of anyone arrested. I was also asured that no one would ever know that I supplied the information on the source of the drugs I brought, or would I be in court with anyone they arrested with the information I provided them. On the day of my bail hearing I saw the two Lifshitz brothers in court. They had been told by either the agents or the prosecutor that I was responsible for supplying the information on where I bought the drugs. This made me very dubious of the sincerity of the agents.

After I was released on bail, I was confronted with one of the most difficult decisions of my life, whether to cooperate or not,

When I met with the Ass't prosecutor he told me that I would have to testify against these two brothers in a grand jury and later, after an indictment, at thier trial. I was told that by cooperating fully with the Government I would be helping myself immensely in getting a recommendation for a lienient sentence. I was not told that if I decided not to cooperate that this could result in a recommendation for punishment because of my refusal.

On two occasions when I went to visit my lawyers, the Lifshitz brothers and another person were waiting near his office to talk to me. These men were not friends of mine, just people I met through other people. They told me that they were quite angry at me for giving the agents information. They expressed to me that if I cooperated in helping prosecute them that they were sincere in thier threats of retribution towards my wife and I.

They told me that they knew both my New York and Arizona address, and that they would constantly pursue me if I agreed to testify against them.

The ass't prosecutor had informed me that if I testified against them, that for my safety they would help relocate me in another part of the country. He told me I would be given a new name and in a general new life. This appeared to me to be the equivalent of the situation if I were to jump my bail. In both instances I would not be able to live a full and normal life. I felt that in either situation I would tend to rely on drugs as an escape for my predicament. If I was relocated by the government, I would always be in constant fear of those I testified against. If I jumped bail, I would be in constant fear of the legal consequences. In both instances I would never be able to associate myself with my family or close friends, and would never be able to lead an emotionally stable life. I would always feel a tremendous amount of anxiety, paranoia and frustration. My whole future would be one of uncertainty, apprehension, and confusion.

One thing I have felt all my life is abstaining from getting others involved in my problems. It has always been a firm belief of mine to take my punishment and refrain from involving others for my own personal benefit.

Even though these two brothers were not my friends, I could find no rational to send them to jail in my place. I explained to the prosecutor that I was not emotionally able to testify against anyone in court. My own appearances in court were very trying on me emotionally. I did not feel I could handle the trepidations of testifying against others in a grand jury and a trial.

Each time I was asked to cooperate, I became more apprehensive, fearful and developed a great deal of anxiety. At this time I was making a strong effort to disassociate myself from everyone of my friends involved with drugs. I had stopped using drugs, and I didn't want this situation help make me resort to drugs to temporarily alleviate my emotional problems. My belief was that if I began to cooperate with the agents and prosecutor, I would be obligated to continue as an informer and buyer. I truly wanted to get out of the drug scene.

My decision not to cooperate was based on many factors. It was influenced by my emotional state and not a disrespect for the Government. Even when I became aware of the possible consequences I might face if I would not cooperate, I had to stay with my personal beliefs. Even though cooperating might help me with my case, the continuation in the drug scene, the fear of retribution, and involvement with these people, and most important my emotional state made me decide not to cooperate.

Sir, I feel a strong sense of remorse for involving myself with this illegal activity, not just because of the harm it has caused me, but the hurt it has caused my wife, friends and parents.

I am sincere in my goal for a normal productive future. When I was released on bail, I did disassociate myself from my old friends and lifestyle. I continued to work and stayed away from using drugs. My future is concerned with further schooling and dedication to my family.

On recommendation by the court, I have been attending group and extra individual psychotherapy. I attend all available rehabilitative counseling sessions on a regular basis. If you so desire you can request letters from my counselors, psychologist and job supervisor. They will inform you that I am making a sincere constant conscious effort to do my best in seeking a constructive rehabilitation program here.

Sir, I am maintaining an excellent conduct record here and have involved myself with every recommended and voluntary rehabilitative program. I will however, still have only a poor chance for parole even at a third of

my sentence. Although my salient factor score is in the highest category, my guidelines call for me to do 26-36 months. The Parole Commission in FCI Danbury, does not pay attention to the Courts (A)-(2) or (B)-(2) or any other rehabilitative numbers that it places on sentences. This Commission uses the guidelines to determine a mans eligibility for parole. This would mean I would probally have to serve approximately two and a half years before they even consider me for a parole. My request for a reduction of my sentence is to make it feasible that I can obtain parole not based on my past mistakes but on the rehabilitative qualities I can prove here, and apply towards my future goals.

Sir, I realize that after I am paroled, I will have to be on probation for the remainder of my sentence, and then begin three years special parole. I know that if I do not adhere to all laws and the regulations of parole, I will be incarcerated again. I feel I can prove the sincerity of my desire for a normal productive future by abiding by all laws and regulations. It has been almost two years since I was arrested. Many aspects of my lifestyle and personality have changed. I have become more secure and emotionally stable. My outlook on life is one of dedication to my family and firmly established future goals.

Respectfully submitted,


James DiGiovanni